

ALABAMA DEPARTMENT OF REVENUE
REVENUE PROCEDURE 98-001
[Supersedes Rev. Proc. 97-002]

DATE: March 16, 1998

SUBJECT: Limited Liability Company ("LLC"), Treatment as a Partnership,
Corporation or Otherwise

(1) **Scope.** This revenue procedure is issued pursuant to section 40-2A-5 to provide guidance as to the applicability of this state's taxing statutes in Title 40 Code of Alabama 1975, to both domestic and foreign LLCs and to the related documentation required to be filed pursuant to sections 40-2A-7, 40-14-44, 40-18-28 and 40-18-55. This revenue procedure supersedes Revenue Procedure 97-002 and is necessary due to the effective amendment of section 40-18-28, by Act 97-920. The amendment to section 10-12-8(b) by that Act repeals the prior classification of single member LLCs as partnerships under Title 40 Code of Alabama 1975, and now requires "disregarded entity" status in conformity with the federal income tax treatment of those entities.

(2) **Definitions.** The following terms have the meanings ascribed to them for purposes of this revenue procedure.

(a) LLC. A legal entity organized under the Alabama Limited Liability Company Act or an organization or entity formed under the laws of any other state, nation or territory that is substantially similar to an LLC.

(b) "Check-the-box" regulations. Regulations issued by the Internal Revenue Service under I.R.C. section 7701 in December 1996, as amended, to provide for the tax classification of an LLC as a partnership, corporation or otherwise.

(3) **Applicability of Taxing Statutes.**

(a) For purposes of the taxing statutes in Title 40, Code of Alabama 1975, all LLCs which, pursuant to Act 97-920, includes both single member and multiple member LLCs, organized on or after January 1, 1997, will be classified as they are classified for federal income tax purposes under the Internal Revenue Service's "check-the-box" regulations.

(b) With respect to LLCs organized before January 1, 1997, the Alabama Department of Revenue will conform to the LLC's classification under the Internal Revenue Service's "check-the-box" regulations for all tax years preceding January 1, 1997.

(4) **Procedure.** Pursuant to sections 40-2A-7, 40-14-44, 40-18-28 and 40-18-55, the taxpayer shall provide documents the Department deems necessary in order to verify the taxpayer's election to the Internal Revenue Service, if any, as to the classification of an LLC.

(5) **Effective Date.** This revenue procedure is effective January 1, 1998.

H. E. Monroe, Jr.
Commissioner of Revenue